* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 01st September, 2026***
Pronounced on: 18th November, 2026
Uploaded on: 18th November, 2026

CNR No. DLHC010142702026

\+ **RFA 327/2026, CM APPL. 22678/2026, CM APPL. 22680- 22681/2026**

AKSHAY PURI
Aged about 50 years
S/o Late Ashok Puri,
R/o D1/10, Vasant Vihar GF, New Delhi-110057. .....Appellant

Through: Mr. Jetender Pal Singh, Senior Advocate with Mr. Vishal Ganda, Mr. Varun Kumar, Ms. Chhavi Jain, Mr. Rishabh Arya, Advocates.

versus

Mr. KAILASH KUMAR ARORA
S/o Shri Lila Kishan
R/o 68, Main Street N, Suite 229,
Markham Ontario,
Canada-L3P 0N5. ....Respondent

Through: Mr. Abhimanyu Garg, Ms. Tanishka, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 *(hereinafter referred to as 'CPC')*, has been filed on behalf of the Appellant, *Akshay Puri*, against the Judgment and

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Decree dated 10.02.2026 ***of possession and Mesne Profits to the tune of Rs.3,00,000/- per month, from the date of filing of the Suit till realisation***, passed by the learned District Judge, New Delhi, under Order XII Rule 6 read with Order XV CPC.

2. The Plaintiff, through his Power of Attorney Holder, *Mr. Sunil Jasuja*, under the Power of Attorney dated 05.05.2017, had filed a ***Civil Suit bearing CS No. 463/2018*** for **Recovery of Possession** of the Basement and Ground Floor of the residential Property bearing No. D-1/10, Vasant Vihar, New Delhi *(hereinafter referred to as 'suit property')* admeasuring 605 square yards, and *Mesne* Profits @ Rs.2,50,000/- per month from 16.04.2018 till the date of delivery of possession.

3. The ***brief facts*** are, that the Plaintiff, *Mr. K.K. Arora*, a citizen of Canada of Indian origin and resident of Markham, Ontario, who was aged 76 years, stated that the entire property bearing No. D-1/10, Vasant Vihar, New Delhi, was inherited by him from his mother, *Late Smt. Janki Dev*i, upon her demise in 1996. He became the sole and absolute owner of the suit property and it was mutated in his name as a freehold property, in the records of the Delhi Development Authority.

4. The Plaintiff entered into a Collaboration Agreement on 12.11.1998 with Mr. B.K. Uppal, the Developer, for redevelopment of the property. In terms of the Collaboration Agreement, apart from some monetary consideration, the Plaintiff got the completed and finished Basement and Ground Floor of the property.

5. The Plaintiff subsequently, out of love and affection for his sister, *Late Mrs. Promila Puri*, permitted her to reside in the suit property with her husband, *Mr. Ashok Puri*, Defendant No.1, and their two sons, *Mr. Akshay*

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Puri, Defendant No.2, and *Mr. Anuj Puri*, Defendant No.3, sometime in around 2000-2001.

6. They occupied the suit property *gratis i.e.* without paying any rent or fees or charges to the Plaintiff, and had no right or title in the suit property except the right of permitted user granted by the Plaintiff. Mr. Anuj Puri, the son moved to Hong Kong long back and resides there since long.

7. The Plaintiff being the owner, continued to pay all taxes and duties, including property tax, in respect of the suit property. He visited India regularly, on average, twice a year and stayed in the suit property for extended periods, during his visits. Some of his personal belongings also remained there.

8. After the demise of *Mrs. Promila Puri* in 2013, Defendant Nos.1 and 2 continued to reside in the suit property without paying any rent or charges. The Plaintiff proposed the execution of a Rent Agreement, but no agreement materialised as Defendant No.1 was unwilling to enter into such an arrangement; instead wished to purchase the suit property, to which the Plaintiff did not agree.

9. *Subsequently, the relations between the parties, soured.* Nevertheless, considering their familial relationship, the Plaintiff, by a Letter dated 10.12.2017 sent by email, proposed certain options for the Defendants' continued occupation. He called upon Defendant No. 1 to execute a Rent Agreement by 15.03.2018, or hand over vacant possession of the suit property, by 15.04.2018.

10. No response was received from Defendant No.1. By a further Letter dated 08.03.2018, the Plaintiff expressly withdrew his earlier offer and

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asked the Defendants to vacate the suit property on or before 15.04.2018, and hand over vacant physical possession to his Power of Attorney Holder.

11. The Plaintiff, by way of abundant caution, also addressed an e-mail dated 10.03.2018 to the Defendants at the e-mail ID of Defendant No.2, Akshay Puri, wherein he reiterated the contents of the Letter dated 08.03.2018, with the same request to the Defendants to vacate the suit property and to hand over its possession to his Power of Attorney Holder, on or before 15.04.2018.

12. Despite service of these communications, the Defendants failed to vacate the suit property. The Plaintiff asserted that, upon withdrawal of the permission granted to them, their continued occupation after 15.04.2018 was illegal and unauthorised.

13. Hence, the Plaintiff filed the *Suit for Recovery of Possession and Mesne Profits @Rs.2,50,000/- per month from 16.04.2018 till delivery of vacant and complete possession, claiming it to be the prevalent monthly rent of a similarly situated property.*

14. The defence of the Defendants was struck off *vide* Order dated 29.10.2018, which was recalled on 28.11.2022 and the Written Statement was taken on record.

15. Defendant Nos. 1 and 2, *namely*, Ashok Puri and Akshay Puri, in their ***Written Statement*** raised a *preliminary objection* that the Suit constituted an abuse of the process of law and had been instituted with a *mala fide* intention to harass them.

16. They claimed that the rights *qua* the suit property had already been settled *inter se* the parties and that the Plaintiff, by his conduct and pursuant

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to ***a mutual settlement*** *with Late Smt. Promila Puri and the Defendants,* had waived his rights therein.

17. According to the Defendants, the Plaintiff had been residing in Canada for almost 60 years and wanted to ensure that his share in the family properties, be protected. The parties, therefore, entered into a mutual settlement and understanding.

18. Since the Plaintiff resided abroad, he authorised *Smt. Promila Puri* to facilitate the sale of the first floor of the property bearing No. D-1/10, Vasant Vihar, New Delhi, and remit the entire sale proceeds to him. He also authorised her to sell two other properties, *namely,* 412A, Ansal Bhavan, Kasturba Gandhi Marg, New Delhi, and 408, Surya Kiran, Kasturba Gandhi Marg, New Delhi.

19. In consideration of the efforts of *Smt. Promila Puri*, the Plaintiff had bequeathed his rights *qua* the Basement and Ground Floor of the suit property, and the parties arrived at an arrangement whereby *Smt. Promila Puri* and the Defendants were given complete ownership and possession rights therein, ***upon payment of a small sum***.

20. During her lifetime, *Smt. Promila Puri* repeatedly requested the Plaintiff, to complete the transfer of ownership. He, however, assured her that he would bequeath the suit property to her through a Will, so that the parties would avoid the taxes and levies applicable to a transfer and would be required to pay only minimal mutation charges, upon inheritance.

21. The Defendants further pleaded that the Plaintiff had, in fact, executed a Will bequeathing complete rights in the suit property to *Smt. Promila* Puri, which made it amply clear that the parties wanted to give effect to the mutual agreement between them.

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22. The Defendants further stated that in December 1999, the Plaintiff and *Smt. Promila Puri* entered into an *Oral understanding in the nature of a Settlement*, whereby the Plaintiff agreed to give up his rights to own and reside in the suit property, *in return for substantial sums* to be transferred to him through a joint savings account held with *Smt. Promila Puri*, at Standard Chartered Bank.

23. They claimed that *Smt. Promila Puri* and the Defendants transferred substantial sums for the Plaintiff's benefit, pursuant to this arrangement. The sale proceeds of the other properties, were also remitted to him. They disputed that their occupation of the suit property was merely gratuitous and claimed a right to remain in possession under the Settlement.

24. Smt. Promila Puri expired on 08.04.2013 and pre-deceased the Plaintiff. The Defendants pleaded that thereafter, a *further agreement* was reached whereby, the Plaintiff was to retain complete ownership and control over the joint Account, while they were to get complete ownership of the suit property. Pursuant to this arrangement, they relinquished, by their conduct, their rights in the joint Account, leaving its sole benefit with the Plaintiff. In return, he assured them that the formalities for transfer of title in the suit property, would be completed in due course.

25. The Defendants claimed continuous, peaceful and uninterrupted possession of the suit property since December 1999, extending over more than 19 years. Without prejudice to their claim under the settlement, they alternatively ***pleaded ownership by adverse possession***.

26. ***On merits***, the Defendants stated that *Late Smt. Janki Devi*, mother of the Plaintiff, was granted the sub-lease rights of the plot under the Perpetual Sub-Lease Deed dated 30.12.1972, and she bequeathed all her rights in the

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property to the Plaintiff, by her Will dated 16.02.1988. Upon her demise on 08.12.1996, the property was mutated in favour of the Plaintiff by the DDA, *vide* letter dated 06.05.2017. The averments regarding the Collaboration Agreement, were denied as false. It was asserted that the Plaintiff had handed over the entire possession of the property to Mr. B.K. Uppal under the Collaboration Agreement dated 12.11.1998, and had thereafter, got back its possession, including of the First Floor, through *Smt. Promila Puri*, *vide* possession letter dated 27.09.1999.

27. The communications dated 10.12.2017, 08.03.2018 and 10.03.2018 were described as matters of record, requiring no reply. However, relying on the settlement and arrangements stated above, *they disputed that their occupation was gratuitous or unauthorised and denied the Plaintiff's entitlement to possession and mesne profits.*

28. *Accordingly, they sought dismissal of the Suit with costs.*

29. The Plaintiff moved an Application under Section 151 CPC dated 16.09.2021, seeking deposit of use and occupation charges @Rs.3,00,000/- per month, along with copies of Lease deeds of similarly situated properties in Vasant Vihar. While considering the Application, the learned District Judge examined the pleadings and **invoked Order XII Rule 6 and Order XV CPC, considering the admission made in the pleadings.**

30. The learned District Judge held that the alleged Mutual Settlement lacked material particulars and that relinquishment of the Plaintiff's rights, required a registered instrument. The alleged payment of consideration, was also unsupported by documentary proof.

31. The claim under the alleged Will was also rejected, the Plaintiff being alive and his Notice dated 08.03.2018 being inconsistent with any subsisting

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bequest. The Defendants' occupation was held to be permissive, and their plea of adverse possession was rejected for want of the requisite hostile assertion, against the Plaintiff's title.

32. The learned District Judge found the defence vague and inconsistent and held that no triable issue arose. The Lease Deeds of similarly situated properties in the same locality, were accepted as substantiating the claim for *mesne* profits at Rs.3,00,000/- per month.

33. Consequently, the Suit of the Plaintiff was decreed *vide* judgement dated *10.02.2026* for recovery of Possession of the suit property and for *Mesne* Profits @ Rs.3,00,000/- per month from the date of institution of the Suit *"till realization"*, under Order XII Rule 6 and Order XV CPC.

34. *Aggrieved by the Judgment and Decree dated 10.02.2026, the Appellant has preferred the present Regular First Appeal*.

35. The ***grounds of challenge*** are, ***firstly,*** *that Order XII Rule 6 read with Order XV CPC has been wrongly invoked, the Suit has wrongly been decreed without trial.* It is contended that the power to pronounce Judgment on admissions is discretionary and requires clear, unequivocal and unconditional admissions. The Written Statement disputed the Plaintiff's subsisting ownership and right to possession, on the basis of a family settlement; execution of a Will; consideration through relinquishment of claims to the joint Bank Account and, alternatively, adverse possession. These defences, if established, would defeat the claim for possession and could not be disregarded, while identifying admissions in the pleadings.

36. Reliance is placed on *Himani Alloys Ltd. v. Tata Steel Ltd*., (2011) 15 SCC 273; *Karan Kapoor v. Madhuri Kumar*, (2022) 10 SCC 496; *Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha*, (2010) 6 SCC 601; and

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Uttam Singh Duggal & Co. v. United Bank of India, (2000) 7 SCC 120, to contend that judgment on admissions was unwarranted where substantive defences required adjudication. *S.M. Asif v. Virendar Kumar Bajaj*, (2015) 9 SCC 287 and *Balraj Taneja v. Sunil Madan*, (1999) 8 SCC 396 are also relied upon to submit that the discretion could not be exercised mechanically.

37. The Plaintiff had sought a Decree under Orders X, XII, XIV and XV CPC read conjointly, without framing formal issues. The Appellants contend that reliance on these provisions, did not dispense with their respective requirements. The disposal without trial, is specifically opposed on the ground that the defence raised material questions concerning the Settlement, the parties' subsequent conduct and the nature of their possession.

38. It is further contended that Order XV Rule 1 CPC was inapplicable, because the parties were at issue on material questions of law and fact. The conditions under Rule 3 were also not satisfied, since further evidence was necessary to determine the pleaded arrangements and no conclusion could be reached that the immediate disposal would cause no injustice. The hearing ought to have been postponed for production of evidence, under Rule 3(2).

39. The Order dated 29.10.2018 striking off the defence, had been recalled on 28.11.2022, and the Written Statement was taken on record. Despite restoration of the defence, the Appellants were denied an opportunity to lead evidence and test the Plaintiff's case through cross-examination. They contend that this violated the principles of natural justice and their right to a fair hearing under Articles 14 and 21 of the Constitution of India.

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40. In support, reliance is placed on *S.L. Kapoor v. Jagmohan*, (1980) 4 SCC 379; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Aroush Motors / Avnita Auto Tech*, 2025 SC; *Ranjit Singh v. State of Uttarakhand*, 2024 INSC 724; and *Paradise Industrial Corporation v. Kiln Plastics Products*, AIR 1975 SC.

41. The delay between striking off the defence in 2018 and its restoration in 2022, followed by disposal of the Suit in 2026 without trial, is claimed to have caused prejudice. The Appellants contend that, despite the prolonged proceedings, they were ultimately denied an opportunity to establish the rights, asserted by them.

42. ***Secondly,*** the Appellants contended that the Written Statement was not considered, in its entirety. Reliance is placed on *R.K. Markan v. Rajiv Kumar Markan*, 2002 (62) DRJ 241 and *Vijay Gupta v. Ashok Kumar Gupta*, 2007 (95) DRJ 167, to submit that isolated statements could not be treated as admissions, without considering the accompanying explanations and substantive defence. The failure to consider the pleaded case and supporting material, is assailed as perversity and non-application of mind, for which reliance is also placed on *Kuldeep Singh v. Commissioner of Police*, (1999) 2 SCC 10 and *Rajinder Singh v. State of Punjab*, (2013) 12 SCC 615.

43. It is contended that the learned District Judge has wrongly *rejected the oral Family Settlement* and the supporting material relied upon, by the Appellant. The learned Trial Court erroneously treated the Settlement as an ordinary oral relinquishment requiring registration. Its reliance on *Sushila v. Vijay Kumar Bhardwaj*, *Prema Suryanarayanan v. S. Venkataramanan* and *Sandeep Kohli v. Vinod Kohli*, is disputed on the ground that those decisions

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concerned pleas of oral partition and did not justify rejection of the family arrangement, pleaded in the present case.

44. Relying on *Kale & Ors. v. Deputy Director of Consolidation & Ors.*, (1976) 3 SCC 119, the Appellants submit that a *family arrangement* may be oral and, in such a case, does not require registration. There is a distinction between an Instrument creating rights in immovable property and a subsequent Memorandum recording an already concluded arrangement. The absence of an antecedent title in one participant, does not necessarily defeat the arrangement where the other participant relinquishes his claim and acknowledges the former's entitlement.

45. The Appellants asserts that a *Family Arrangement* which adjusts the rights and claims of its participants, is not to be treated as an ordinary conveyance. The expression *"family"* encompasses the Plaintiff, his sister and her family, and the arrangement is sought to be upheld on the basis of their relationship, mutual obligations and subsequent conduct. Reliance is placed on *Ram Charan Das v. Girjanandini Devi*, (1965) 3 SCR 841 and *K. Arumuga Velaiah v. P.R. Ramasamy*, (2023) 3 SCC 757, in addition to *Kale & Ors.* (supra).

46. The finding that the Settlement lacked material particulars, is specifically disputed. The Appellants refer to the pleaded understanding of December 1999, the identity of its participants, the suit property and the other properties involved and *Smt. Promila Puri's* assistance in managing and disposing of the Plaintiff's properties, pursuant to the authority conferred upon her. The Will and the arrangement concerning the joint Bank Account, are relied upon as corroborative acts. These averments, having been disputed, required framing of Issues under Order XIV Rule 1 CPC and

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determination through evidence. The learned Trial Court could not have held that the Settlement was unproved, without permitting evidence in its support.

47. The *Will dated 11.04.2001* was relied upon as evidence of the Plaintiff's intention and as corroboration of the family Settlement, rather than as a testamentary instrument conferring title. The Appellants contend that the Plaintiff being alive, did not render the Will irrelevant and that its evidentiary significance was distinct from its operative effect under Section 2(h) of the Indian Succession Act, 1925. They invoke Sections 8 and 9 of the Indian Evidence Act, 1872 and contend that they ought to have been permitted to prove the document under Order XVIII CPC. Reliance is placed on *Metpalli Lasum Bai v. Metapalli Muthaih*, 2025 INSC 879.

48. The subsequent arrangement concerning the joint Bank Account, also required adjudication. The Appellants claim that, after *Smt. Promila Puri's* demise, they relinquished their claims to the joint Account, in consideration of the Plaintiff agreeing to transfer ownership of the suit property to them. Whether such relinquishment occurred and constituted consideration for the arrangement, required examination of the Bank records and the parties' conduct. Further, their plea of set-off, could not be rejected without adjudication, in terms of Order VIII Rule 6 CPC.

49. The Appellants further submit that the Will, bank records, financial statements and correspondence relied upon by them, were overlooked. These documents, together with oral evidence, had a bearing upon the existence and implementation of the Settlement, the Plaintiff's acceptance of its benefits and the effect of his subsequent notice seeking possession.

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50. ***Thirdly,*** it is contended that the learned District Judge has wrongly *rejected the alternative plea of adverse possession and ignored the acquiescence by the Plaintiff.* The Appellants contend that their defence could not be rejected, merely because alternative pleas had been taken. Their primary claim was ownership under the *Family Settlement*, while adverse possession was pleaded in the alternative. These pleas are stated to operate sequentially, rather than being mutually destructive.

51. Reliance is placed on *Smt. Arundhati Mishra v. Sri Ram Charitra Pandey*, (1994) 2 SCC 29; *Vimal Chand Ghevarchand Jain v. Ramakant Eknath Jadoo*, (2009) 5 SCC 713; and *Firm Sriniwas Ram Kumar v. Mahabir Prasad*, AIR 1951 SC 177.

52. It is submitted that the nature of their possession could not have been determined, merely by describing it as permissive. Whether their occupation was hostile, continuous, open and exclusive, accompanied by the requisite intention, required evidence. Their assertion of possession as of right under the Settlement also required consideration, before they could be treated as licensees. Reliance is placed on *Karnataka Board of Wakf v. Government of India*, (2004) 10 SCC 779 and *Gaya Parshad Dikshit v. Dr. Nirmal Chander*, AIR 1984 SC 930.

53. ***Fourthly***, the Appellants also invoked *the principles of delay, laches, acquiescence and estoppel, by making a reference* to the interval between commencement of their occupation around 1999-2001 and institution of the Suit in 2018, including the period of nearly five years, after *Smt. Promila Puri's* demise. They claimed to have made substantial improvements and having established their home in the suit property, relying on the Plaintiff's conduct and the arrangements between the parties. The Plaintiff's prolonged

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inaction is relied upon, to dispute his subsequent demand for possession. Reference is made to the Limitation Act, 1963 and the principles of estoppel, with reliance on *State of M.P. v. Bhopal Sugar Industries*, AIR 1964 SC 1179 and *Balakrishnan v. M.A. Krishnamurthy*, (1998) 7 SCC 123.

54. The ***fifth ground*** raised challenges the award of *mesne* profits at Rs.3,00,000/- per month, from institution of the Suit *"till realization"*. The Appellants contend that the foundational requirement of wrongful possession under Section 2(12) CPC, could not have been determined without adjudicating their claim about the family settlement. Both their liability for *mesne* profits and the awarded quantum, are disputed.

55. It is submitted that no evidence was recorded or inquiry conducted under Order XX Rule 12 CPC to determine the appropriate rate. The Lease Deeds of allegedly comparable properties, were accepted without permitting the Appellants to challenge their comparability, cross-examine the relevant witnesses or produce independent valuation evidence.

56. Reliance is placed on *Chitturi Subbanna v. Kudapa Subbanna*, AIR 1965 SC 1325, wherein the Hon'ble Supreme Court of India remanded the matter as the High Court had raised the rate of *Mesn*e Profits without assigning adequate reasons. In *Santosh Arora v. M.L. Arora* (Delhi HC, 2011), it was held that the rate of *Mesne* Profits is to be determined on evidence and not as a matter of contract.

57. The Appellants further state that the Plaintiff's pleaded case was that the Appellants occupation was initially gratuitous and that no Rent Agreement was executed. The permission to reside, did not create a landlord-tenant relationship. Also, the use of market rentals to impose liability upon them as though they were tenants, is challenged. The absence

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of agreed rent, rent payments or acknowledgments, is relied upon to challenge the basis of the grant of *Mesne* profits.

58. The rate of Rs.3,00,000/- per month, is also assailed as arbitrary and punitive. The Appellants contend that compensation required an evidentiary assessment, rather than adoption of a notional rental figure. It is further submitted that no rental income was ever received or declared by the Plaintiff and reiterate that the neighbouring properties' Lease deeds, were never tested through evidence.

59. Hence, it is prayed that the impugned Judgment and Decree, *inter alia*, to the extent of *mesne* profits, be set aside and remand of the Suit under Order XLI Rule 23 CPC, for framing of Issues and adjudication after affording both parties an opportunity to lead evidence. Moreover, an inquiry is sought into *mesne* profits under Order XX Rule 12 CPC. Reliance is placed on *Santosh Hazari v. Purushottam Tiwari* (Dead) by LRs., (2001) 3 SCC 179 and *Sirajudheen v. Zeenath*, 2023 SCC OnLine SC 196.

60. The ***Appellant, in his Written Submissions***, reiterated the challenge to disposal without trial and specifically objected to the grant of final relief, while deciding an Application under Section 151 CPC seeking deposit of use and occupation charges. The Application did not seek a final Decree of possession or final determination of *mesne* profits. Reliance is placed on *Padam Sen v. State of U.P.*, 1960 SCC OnLine SC 77, to contend that inherent powers regulate procedure and cannot be used to determine substantive rights in the manner adopted.

61. Reliance is also placed on *Union of India v. Modiluft Ltd.*, (2003) 6 SCC 65; *P.R. Sinha v. Inder Krishan Raina*, (1996) 1 SCC 681; and *State of Orissa v. Madan Gopal Rungta*, 1951 SCC 1024, to submit that interim

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relief must be ancillary to the main relief and cannot substitute final adjudication of the disputed rights.

62. The Appellant further raised an *objection to valuation and pecuniary jurisdiction.* It is contended that the suit property was undervalued to avoid payment of the appropriate court fee and that its value, assessed by reference to the circle rates relied upon by him, exceeded Rs.4 crores and the pecuniary jurisdiction of the learned Trial Court. Reliance is placed on *Kiran Singh v. Chaman Paswan*, (1954) 1 SCC 710, in support of this objection.

63. The oral *Family Settlement* is reiterated as a substantive defence, requiring trial. The Appellant refers to the understanding of December 1999, *Smt. Promila Puri's* assistance in managing and disposing of the Respondent's properties under Powers of Attorney, the Will dated 11.04.2001 and the subsequent arrangement concerning the joint Bank account, together with the family's continued possession, to show that the arrangement was acted upon. Reliance is placed on *Anil Vaswani v. Jyoti Ramesh Santani*, CS(OS) 561/2021 and *Kavita Sharma v. Kanta Sharma*, 2025 SCC OnLine Del 990, to contend that the disputed family arrangement required adjudication on evidence.

64. **The grant of *mesne* profits** is challenged on the additional ground that the third-party Lease Deeds filed with the Application, were not proved or tested through evidence. The Appellant submits that neither their genuineness nor their suitability as comparables was established. The Interlocutory Application under S.151 CPC, could not furnish a sufficient basis for a final award covering the entire period from institution of the Suit *"till realization"*.

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65. The Respondent, in his *Written Submissions*, supports the impugned Judgment and Decree. It is contended that the Written Statement, read as a whole, acknowledged the title of the plaintiff; the permissive origin of the Appellant's possession and receipt of the Notice withdrawing permission. The pleas of ownership through settlement, bequest under a Will, a subsequent oral arrangement and adverse possession were vague, unsupported and mutually inconsistent, disclosing no triable issue.

66. It is submitted that reference to Orders X, XIV and XV CPC did not dilute the applicability of Order XII Rule 6 CPC, but provided additional procedural grounds for disposal without framing issues. Mere filing of a Written Statement did not necessitate a trial, where the defence lacked material particulars. Reliance is placed on *Urmila Sharma v. Jai Bhagwan*, 2021 SCC OnLine Del 4552, to contend that a Suit may be decreed on the pleadings, where a trial would be unnecessary and futile.

67. The objection concerning denial of a fair hearing, is also disputed. The Appellant had filed his Written Statement and Written Submissions and was heard through counsel on the question of disposal without trial. The natural justice did not require a prolonged trial on assertions which disclosed no sustainable defence; the learned Trial Court had considered each plea on a meaningful reading of the pleadings.

68. In regard to the alleged *Family Settlement*, the Plaintiff submitted that the Written Statement disclosed neither a pre-existing dispute nor any antecedent right of the Defendants, and did not set out clear terms of a concluded Arrangement. The alleged understanding was, therefore, insufficient to divest him of ownership. Merely describing it as a *"family settlement"* could not dispense with the necessary pleadings or the

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requirements of the Transfer of Property Act, 1882, the Indian Stamp Act, 1899 and the Registration Act, 1908.

69. The Respondent further contended that the particulars subsequently relied upon, were introduced through Written Submissions and the Appeal, to remedy the deficiencies in the Written Statement. The reliance on *"decades of service"* as consideration, is disputed and contrasts it with the pleaded payment of a *"small sum*", characterising the subsequent formulation, as a change in the foundation of the defence.

70. As to the Will dated 11.04.2001, it is submitted that the Written Statement relied upon it, as a means of acquiring ownership. Its subsequent characterisation as corroborative evidence of the settlement, is assailed as an attempt to overcome the adverse finding of the learned Trial Court. The Respondent also relies on the Notice dated 08.03.2018, as an unequivocal assertion of his rights and withdrawal of the permission to occupy the suit property.

71. The alleged relinquishment of rights in the joint Bank Account, is stated to be unsupported by documents or particulars of the balance, transactions, nomination or the value of the interest allegedly surrendered. The Respondent contends that the Account itself, as distinct from any established entitlement to its funds, could not constitute consideration of an ascertainable value. In the absence of a pleaded liquidated and ascertained sum, the arrangement could not be treated as a valid set-off under Order VIII Rule 6 CPC.

72. It is submitted that the plea of ownership through settlement and adverse possession, are mutually destructive and not merely alternative. According to the Respondent, the Written Statement admitted that

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possession originated with his consent, while adverse possession required an assertion hostile to his ownership. The simultaneous reliance on these pleas, *reinforces the finding that no genuine triable defence arose*. It is further submitted that neither the date on which possession allegedly became hostile nor any overt act denying the Respondent's title, was pleaded. Mere continuance in occupation, including after revocation of permission, did not establish adverse possession, in the absence of a positive hostile assertion.

73. *The pleas of delay, laches, acquiescence and estoppel, are also opposed.* The Respondent submits that prolonged permissive occupation, did not confer an independent right upon the Appellant. The alleged *further arrangement* after Smt. Promila Puri's demise on 08.04.2013, itself recognised the Respondent's subsisting ownership and authority over the suit property.

74. The Respondent referred to the communication dated 10.12.2017, the Notice dated 08.03.2018 and the email dated 10.03.2018 requiring delivery of possession by 15.04.2018. *The Suit, instituted in 2018, is stated to be within limitation.* The Appellant had not identified any applicable provision barring it, and the alleged prejudice arising from displacement after his continued occupation, was not tenable, after the withdrawal of permission.

75. In support of the awarded *mesne* profits, the Respondent had relied on the location of the suit property in Vasant Vihar and the Appellant's occupation without payment since 2000-2001. Lease deeds of comparable properties in the same locality were filed with the Application under Section 151 CPC dated 16.09.2021, to substantiate the prevailing rental value of Rs.3,00,000/- per month.

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76. The Respondent disputes that the Appellant was denied an opportunity, to contest these documents. Referring to the procedural history, he submits that repeated opportunities were granted to file a Reply and advance arguments, accompanied by costs on several occasions. Ultimately, on 08.07.2023, the Defendants stated that no Reply to the Application would be filed. Their right to file a Reply was accordingly closed, and costs of Rs.20,000/- were imposed for their previous conduct.

77. It is further submitted that, on 23.08.2023, the Respondent sought disposal without framing issues, whereupon both parties were directed to file Written Submissions. Written Submissions were subsequently filed and arguments were heard on several dates, including 09.09.2025 and 12.01.2026, before the Suit was decreed on 10.02.2026. The Respondent contends that sufficient opportunity existed to object to the lease deeds or place contrary valuation material on record, and that the Appellant cannot now complain of its denial.

78. The Respondent maintains that the initial gratuitous occupation reflected the familial relationship, did not preclude compensation after permission was withdrawn. The claim is for *mesne* profits arising from wrongful occupation, rather than contractual rent. Having regard to the location of the suit property and the comparable leases, Rs.3,00,000/- per month is stated to be a fair and conservative assessment. The dismissal of the Appeal is accordingly, sought.

Submissions heard and record perused.

79. The Respondent/Plaintiff, *K.K. Arora*, had filed the Suit for recovery of possession of the suit property, claiming to be its sole and absolute owner.

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As per the Plaint, the entire property bearing No. D-1/10, Vasant Vihar, New Delhi, was inherited by the Plaintiff from his mother, *Late Smt. Janki Devi*, upon her demise in the year 1996, and was mutated in his name as a freehold property, by the Delhi Development Authority. Thereafter, the Plaintiff entered into a Collaboration Agreement dated 12.11.1998 with *Mr. B.K. Uppal*, under which he got the completed Basement and Ground Floor of the property.

80. The title of the Plaintiff in the suit property, has been *admitted by the Defendants.* In *reply to the paragraph 2 of the Plaint,* wherein the inheritance and mutation have been averred, the Defendants have stated that *"the contents are a matter of record".*

81. Further, in *paragraph 11 of the Written Statement*, the Defendants have stated as under:

> *"...late Smt. Janki Devi, mother of the Plaintiff and mother-in-law of the Defendant was granted the sub-lease rights of the plot pertaining to the suit property as per Perpetual Sub-Lease Deed dated 30.12.1972...* ***Subsequently, late Smt. Janki Devi left for heavenly abode on 08.12.1996, and as such prior to which, she got the suit property constructed and made her last will and testament dated 16.02.1988 in which she bequeathed all her rights in the suit property in favour of the Plaintiff. Consequently, the suit property was mutated in favour of the Plaintiff in the records of the Delhi Development Authority ("DDA") vide letter… dated 06.05.2017."***

82. Thus, it is ***admitted that the Plaintiff is the owner of the suit property,*** having inherited it from his mother, *Late Smt. Janki Devi*, under her Will dated 16.02.1988.

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83. The ***second aspect*** is the manner in which the Defendants came into occupation of the suit property. As per the Plaint, sometime around 2000-01, the Plaintiff, K.K. Arora, out of love and affection for his sister, *Late Smt. Promila Puri*, permitted her to reside in the suit property along with her husband, Ashok Puri, and their two sons, Akshay Puri and Anuj Puri, *gratis i.e. without paying any rent, fee or charges*. Anuj Puri has since long moved to Hong Kong.

84. *Smt. Promila Puri* expired on 08.04.2013, while her husband and son, Akshay Puri, continued to reside in the suit property. During the pendency of the Suit, Ashok Puri also expired on 28.08.2024, and his legal representatives were brought on record, *vide* Order dated 02.08.2025. The Suit is contested by Akshay Puri, Defendant No.2.

85. The permissive occupation granted by the Plaintiff, *is also admitted by the Defendants.* There is no claim by the Defendants that they ever paid any rent or charges to the Plaintiff for their occupation of the suit property.

86. In *para 6 of the Written Statement*, it is stated *that "the Plaintiff out of love, affection and mutual understanding,* ***gave his consent to Late Mrs. Promila Puri and the Answering Defendants to reside at the suit property…".***

87. Similarly, *in para 9 of the Written Statement*, they have averred as under:

> *"Subsequently, as per the mutual understanding and settlement,* ***the Plaintiff out of love and affection gave his consent to Late Mrs. Promila Puri and the Answering Defendants to reside at the suit property."***

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88. It is also on record that the Plaintiff, *vide* Letter dated 08.03.2018, withdrew the permission and called upon the Defendants to vacate the suit property on or before 15.04.2018, which the Defendants, in their reply to the Plaint, *have described as a matter of record.*

89. ***It is, therefore, established that the Defendants were put in possession of the suit property by the Plaintiff, out of love and affection for his sister, and their occupation was gratuitous, with the permission of the Plaintiff.***

I. ***Whether the Defendant acquired Ownership in the Suit Property:***

90. The Defendants have, however, asserted that they acquired ownership of the suit property. The relevant portion of the **Preliminary Submissions of the Written Statement**, reads as under:

> *"3… It is submitted that the Plaintiff admittedly has been residing in Canada* ***for almost 60 years and as such he wanted to ensure that his share in the family properties be protected.*** *Consequently, the parties herein and Late Mrs. Promila Puri, being the sister of the Plaintiff, decided that they would ensure that the rights and interests of all the parties concerned, should remain protected****. In order to give effect to this, the aforesaid persons entered into a mutual settlement and understanding. That in terms of the understanding and settlement between the parties,*** *on account of the fact that the Plaintiff resided abroad and as such it was not efficient and expeditious for him to dispose off the first floor of the subject property,* ***the Plaintiff had authorised Mrs. Promila Puri to help the Plaintiff dispose off the First Floor of the subject property and give the entire proceeds of the sale to the Plaintiff****. Further, on account of the same reason, the Plaintiff had* ***authorised Late Mrs. Promila Puri to dispose off two other properties***

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bearing address 412A, Ansal Bhavan, Kasturba Gandhi Marg, New Delhi - 110001 and 408, Surya Kiran, Kasturba Gandhi Marg, New Delhi - 110001. ***That in consideration of the efforts of Late Mrs. Promila Puri, the Plaintiff had bequeathed his rights qua the Ground floor and basement of the suit property.*** *In pursuance of the same, the parties arrived at the arrangement whereby the Defendants herein and Late Mrs. Promila Puri were given complete ownership and possession rights qua the Ground Floor and basement of the suit property* ***upon payment of a small sum.*** *That during the lifetime of Late Mrs. Promila Puri, she repeatedly reminded the Plaintiff about his agreement to transfer the complete ownership qua the Ground Floor and basement of the suit property to her; however,* ***the Plaintiff assured her that he would bequeath it to her through a will*** *so that the parties did not have to pay the applicable statutory taxes qua the said transfer. That the Plaintiff further assured the parties that once they inherit the Ground Floor and basement of the suit property from the Plaintiff, they would have to pay minimal mutation charges and they would be able to prevent payment of the aforesaid taxes and levies.* ***In fact, in pursuance of the same, the Plaintiff had also executed a will to this effect wherein he had bequeathed complete rights qua the suit property to Late Mrs. Promila Puri*** *which makes it amply clear that the parties wanted to give effect to the aforesaid mutual agreement between them."*

91. Thus, as per the *Preliminary Submissions*, the Plaintiff had authorised *Smt. Promila Puri*, his sister, to help him dispose of the First Floor of the property in question and two other properties and *to give the entire sale proceeds to him.* ***In consideration of her efforts***, the Defendants and *Smt. Promila Puri were given complete ownership and possession rights in the Basement and Ground Floor,* ***"upon payment of a small sum".***

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92. However, a *different version* has been given ***in paragraph 5 of the Written Statement,*** wherein it is stated as under:

> *"That the Plaintiff out of love and affection for late Mrs. Promila Puri and to honour the terms of the settlement between the parties, entered into a settlement agreement with Late Mrs. Promila Puri and the Answering Defendants as per which, Late Mrs. Promila Puri along with the Answering Defendants were to reside in the suit property. Subsequently, as per the terms of the settlement agreement and* ***in lieu of the plaintiff mutually waiving off his rights towards owning and residing at the Suit Property, a joint savings account bearing account no. 52310008898 was opened in Standard Chartered Bank in the name of the Plaintiff and Late Mrs. Promila Puri and Late Mrs. Promila Puri along with the Answering Defendants continuously transferred huge sums of money in favour of the Plaintiff****. Simultaneously, circa 2000, the Plaintiff authorised Late Mrs. Promila Puri* ***to sell the aforementioned properties on his behalf and the proceeds thereof were transferred in favour of the Plaintiff…"***

93. Similarly, *in paragraph 11 of the Written Statement*, same facts were reiterated as under:

> *"That during the month of December, 1999, the Plaintiff out of love and affection for his sister i.e. Late Mrs. Promila Puri, agreed to a mutual understanding with Late Mrs. Promila Puri and the Answering Defendants,* ***allowed them to reside at the suit property*** *and in respect of which, the Plaintiff and Late Mrs. Promila Puri entered into an* ***oral understanding in the nature of a settlement, as per which, it was agreed that the Plaintiff would mutually waive his right to own and reside at the Suit Property*** *and Late Mrs. Promila Puri along with the Answering Defendants would have continuous, peaceful and uninterrupted possession over the Suit Property and*

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in lieu of waiving off his right towards the suit Property, the Plaintiff and Late Mrs. Promila Puri would open a joint account in their name, through which substantial amount of funds would be transferred to the Plaintiff by Late Mrs. Promila Puri and the answering defendants."

94. The Written Statement thus, discloses that **the defendant had claimed ownership on the following grounds:** ***firstly,*** a mutual settlement or oral family settlement arrived at in December, 1999 in recognition of the *efforts of Smt. Promila Puri* in disposing of the First Floor and the two other properties of the Plaintiff; ***secondly,*** the payment of a *small sum* and also the transfer of *huge sums of money through the joint Bank Account;* ***thirdly,*** the ***Will executed*** by the Plaintiff, K.K. Arora, in favour of *Smt. Promila Puri*; ***fourthly***, a further Agreement after the demise of *Smt. Promila Puri* in 2013, in consideration of relinquishment of their rights in the joint Bank Account; and ***fifthly,*** in the alternative, adverse possession on account of their long possession since December, 1999.

95. *These grounds are considered, as follows.*

A. <u>Whether the Defendants acquired ownership under the alleged Mutual Settlement in 1999:</u>

96. The first ***ground*** that is agitated is that the suit property had been given to *Late Smt. Promila Puri* and the Defendants, by virtue of a mutual Settlement and Understanding, in 1999.

97. From a comprehensive reading of the aforesaid averments in the various paragraphs of the Written Statement, it emerges that admittedly, the Plaintiff was based in Canada. He authorized, through a General power of

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Attorney, his sister/Defendant, *Smt. Promila Puri*, with whom he had love and affection, to sell the first floor of property in question and two other properties, and the sale proceeds were transferred to Plaintiff. It is also the case of the Defendants that in December 1999, they were permitted to reside in the suit property.

98. Pertinently, the Written Statement nowhere describes the arrangement as a family settlement. It is variously termed a *"mutual settlement and understanding"*, an *"arrangement",* a *"settlement agreement"* and an *"oral understanding in the nature of a settlement",* whereby the Plaintiff is stated to have *"waived off his rights".* **It is only in the Appeal, that it is sought to be projected as an oral family settlement.** The plea of a mutual settlement is thus, vague and contradictory, and is a bald assertion unsupported by material particulars.

99. Thus, from the averments made in the Written Statement, it is evident that *no concluded mutual settlement or understanding has been disclosed whereby the sister, Smt. Promila Puri, became the owner of the suit property.*

100. Even if, for the sake of arguments, it is accepted that there was a **settlement as pleaded**, *the question is whether it could have conferred any right, title or interest in the suit property upon Smt. Promila Puri or the Defendants.*

101. The significance and importance of a Family Settlement has been repeatedly emphasized by the Supreme Court. In *Ram Charan Das v. Girjanandini Devi*, (1965) 3 SCR 841, it was observed that the consideration for a family settlement is the expectation that it will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one

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another. In *S. Shanmugam Pillai v. K. Shanmugam Pillai*, (1973) 2 SCC 312, it was observed that where the family members have settled their disputes amicably, the Court would lean in favour of the family arrangement and would be reluctant to disturb the same.

102. The first aspect, however, is to understand what arrangement can be termed as a family settlement. The Supreme Court in *Sahu Madho Das v. Pandit Mukand Ram,* AIR 1955 SC 481, explained as under:

> *"It is well settled that compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively.* ***That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement."***

103. These principles were reiterated in *Kale v. Deputy Director of Consolidation*, (1976) 3 SCC 119. There it was held that a family arrangement must be *bona fide*, so as to resolve family disputes and rival claims by a fair and equitable division of properties between the members of the family. It may even be oral, in which case no registration is necessary. The members who are parties to the family arrangement must have some antecedent title, claim or interest, or even a possible claim, in the property, which is acknowledged by the parties to the settlement. Even if one of the parties has no title, the arrangement may be upheld where the other party relinquishes all his claims in favour of such person and acknowledges him to

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be the sole owner. *The onus of proving the family settlement lies on the person who asserts it.*

104. Keeping in mind the aforesaid principles, the facts of the present case may be considered. As noted above, the Defendants have themselves admitted that *Late Smt. Janki Devi*, by her Will dated 16.02.1988, bequeathed all her rights in the suit property to the Plaintiff. Smt. Promila Puri, therefore, had no title or claim in her own right, in the suit property, nor is there any averment of a dispute between the Plaintiff and his sister which was sought to be resolved. The alleged arrangement could, therefore, be upheld only if the Plaintiff had relinquished his title in her favour and acknowledged her to be the owner, as observed in *Kale* (supra), on which reliance has been placed by the Appellant.

105. It is the own case of the Defendants that despite repeated reminders by *Smt. Promila Puri*, the Plaintiff did not transfer the ownership to her, but only assured her that he would bequeath the suit property to her through a Will. Admittedly, no document of transfer of title was ever executed. What emerges from the averments in the Written Statement is that the Plaintiff had the intention and understanding to transfer the property to the sister, but it did not fructify into any document of transfer. *Mere intention or understanding cannot, under the law, transfer any title in favour of the sister.*

106. Smt. Promila Puri having no antecedent title, and the Plaintiff having not relinquished his title, the alleged arrangement could only have been a transfer of the ownership of the suit property, which, whether by way of sale or gift, could be effected only by a registered instrument under Sections 54 and 123 of the Transfer of Property Act, 1882. Merely describing the

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arrangement as a *"family settlement"*, cannot dispense with the essential requirement of a family arrangement *i.e. an antecedent title or claim of the parties and a bona fide settlement of disputes between them and in the absence of such settlement, a document of conveyance is necessary.*

107. Even otherwise, the services rendered by Smt. Promila Puri as an attorney of the Plaintiff, howsoever long, were rendered to manage the suit property, much prior to the alleged settlement of December, 1999, and cannot be equated with ownership of the suit property.

108. Significantly, there is nothing in the Written Statement to show that the Defendants ever dealt with the suit property, as owners. On their own showing, the suit property was mutated in the name of the Plaintiff by the DDA, *vide* letter dated 06.05.2017, nearly eighteen years after the alleged settlement. There is no averment that the Defendants ever sought mutation in their favour, or paid the property tax, which as per the Plaintiff was all along paid by him.

109. *The Plaintiff, therefore, never relinquished his title or acknowledged Smt. Promila Puri or the Defendants as owners.* On the contrary, after the demise of Smt. Promila Puri, the Plaintiff proposed a Rent Agreement and thereafter, *vide* Notice dated 08.03.2018, withdrew the permission and called upon the Defendants to vacate the suit property, both of which assertions, the Defendants have described "*as a matter of record"*.

110. Thus, the ***first ground of a mutual settlement***, even if accepted as pleaded, does not confer any right, title or interest in the suit property upon the Defendants.

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B. *Whether the payment of consideration was made by the Defendant/ Sister:*

111. The Defendants, now represented through the Appellant, have taken mutually destructive stands in their Written Statement. While admitting that the Plaintiff was the owner and that his sister, *Smt. Promila Puri*, had been permitted to stay in the suit property out of love and affection, in order to establish a right to continue in the suit property, it was asserted in the Preliminary Submissions that in *lieu* of the efforts of *Smt. Promila Puri* in disposing of the properties of the Plaintiff in India, the Plaintiff decided to bequeath the Basement and Ground Floor of the suit property to her, for which a *"small sum"* was paid.

112. However, in *paragraph 5 of the Written Statement*, it was stated that a Joint Savings Account was opened in the Standard Chartered Bank in the names of the Plaintiff and *Late Smt. Promila Puri*, and that *Smt. Promila Puri* along with the Defendants had continuously transferred ***huge sums of money in favour of the Plaintiff.*** It was further stated that the sale proceeds of the properties of the Plaintiff, sold on his behalf by *Late Smt. Promila Puri*, were also transferred in favour of the Plaintiff.

113. Likewise, a plea was taken in paragraph 11 of the Written Statement that the parties *"entered into an oral understanding in the nature of a settlement, as per which, it was agreed that the Plaintiff would mutually waive his right to own and reside at the Suit Property… and in lieu of waiving off his right towards the suit Property, the Plaintiff and Late Mrs. Promila Puri would open a joint account in their name, through which* ***substantial amount of funds*** *would be transferred to the Plaintiff by Late Mrs. Promila Puri and the answering defendants".*

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114. From the aforesaid averments made in the Written Statement, it emerges that while at one place it is stated to be a *small sum, at another it is huge sums of money.* There is, however, **no description or details of this alleged small amount,** or of the date on which it was paid to the Plaintiff, in terms of the alleged oral understanding *inter-se* the parties.

115. Though it is pleaded that a Joint Account of the Plaintiff and *Late Smt. Promila Puri* was opened, but ***not an iota of evidence,*** *even by way of figures or details* in the Written Statement, to explain the alleged huge sums of money transferred by *Late Smt. Promila Puri*, or the amounts given up in favour of the Plaintiff.

116. Therefore, the Defendants have not been able to show any right, title or interest in the suit property.

C. *Whether the Defendants acquired ownership under the further Agreement in 2013, after the demise of Smt. Promila Puri, in consideration of relinquishment of their rights in the Joint Bank Account:*

117. In order to establish their ownership rights, the Defendants have given different, contradictory versions. In the Preliminary Submissions of the Written Statement, the Defendants have set up a *fresh agreement after the demise of Smt. Promila Puri* in 2013, as under:

> *"Late Mrs. Promila Puri met her sad demise on 08.04.2013 and pre-deceased the Plaintiff.* ***Subsequently, t****he Plaintiff and the Defendants herein came to the agreement that the Plaintiff would continue to operate and enjoy complete ownership and control over the joint account of the Plaintiff and Late Mrs. Promila Puri and the Defendants would get complete ownership of the Ground Floor and basement of the suit property. In*

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> *pursuance of the same, by their conduct,* ***the Answering Defendants relinquished all their rights qua the said joint account and the Plaintiff continued to enjoy the sole benefit of the said joint account.*** *In consideration of the same, the Plaintiff assured the Defendants herein that it would only be a matter of time before all the formalities in connection with transferring the title, of the Ground Floor and basement of the suit property, to the Defendants is concluded."*

118. *This plea is inconsistent with the plea of the first settlement of December, 1999.* If the ownership had already been given in December, 1999, for which consideration in the form of the *efforts of Smt. Promila Puri, a small sum and substantial sums of money is claimed to have been paid*, there was no occasion for a further Agreement in 2013 on a fresh consideration, by way of relinquishment of their rights in the Joint Account, whereby the Defendants *"would get"* complete ownership.

119. Thus, on the Defendants' own case, even after the demise of *Smt. Promila Puri*, the title in the suit property had not passed to them, and the formalities for its transfer, were yet to be completed. The averment that complete ownership was given to them *is, therefore, a bare assertion, which is belied by the very facts pleaded by them in its support, and does not give rise to any triable issue.*

120. As noted above, the Joint Account was stated to be in the names of the Plaintiff and *Smt. Promila Puri*, and the Defendants were not its account holders. Apart from the account number, no particulars of the balance, the transactions or the value of the right allegedly relinquished, have been given. These particulars are material, since the relinquishment of rights in the Joint

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Account, is set up as the very consideration for the transfer of ownership of the suit property.

121. Even if it is accepted that after the demise of *Smt. Promila Puri,* there may have been an agreement *inter-se* the parties, that the Account was left to be operated exclusively by the Plaintiff, but there is no whisper about the sums allegedly contributed in the Joint Account by *Late Smt. Promila Puri*, or that there was any agreement to let the money actually owned by *Smt. Promila Puri,* be enjoyed by the Plaintiff.

122. The defence that a small amount, and thereafter, huge amounts through the Joint Account, were paid by *Late Smt. Promila Puri* as consideration for the waiver by the Plaintiff of his rights in the suit property, *is thus, vague.* No details of any kind have been furnished in the Written Statement from which it could be inferred that any triable issue arises. *It is a vague plea, bereft of any details, which does not give rise to any triable issue.*

123. Irrespective of the aforesaid, even if it is accepted that small or large amounts were transferred by *Late Smt. Promila Puri* to the Plaintiff, in the absence of any Sale Deed or other document of transfer of the property in the name of *Smt. Promila Puri*, mere payment of money cannot create any proprietary right in the suit property, in favour of *Late Smt. Promila Puri*. Admittedly, no document whatsoever, of transfer of the property has been executed in favour of Smt. Promila Puri, and the Plaintiff continues to be the exclusive owner of the suit property. *In the absence of any averment as to what was in the account, or what right the Defendants had therein, whether as heirs of Smt. Promila Puri or otherwise, which they gave up, the* ***plea discloses no ascertainable consideration whatsoever.***

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124. Even if accepted as pleaded, the alleged agreement is at best an oral agreement to transfer the ownership in future, which under Section 54 of the Transfer of Property Act, 1882, does not, of itself, create any interest in such property. Nor can such an oral agreement entitle the Defendants to retain possession, since the protection under Section 53A of the Act, is available only under a contract in writing, signed by the transferor.

125. *Thus, the alleged Agreement after the demise of Smt. Promila Puri does not confer any right, title or interest upon the Defendants in the suit property.*

D. *Whether the Will dated 11.04.2001 executed by the Plaintiff, conferred the ownership rights in favour of Smt. Promila Puri:*

126. As *per the version* of the Defendants, complete ownership was given to them in December, 1999. It is their case that *Smt. Promila Puri* repeatedly reminded the Plaintiff to transfer the ownership to her, and that the Plaintiff assured her that he would bequeath it to her through a Will, so that they would *"inherit"* it from him, to save tax. It was further asserted that Plaintiff "***had also executed a Will to this effect wherein he had bequeathed complete rights qua the suit property to Late Mrs. Promila Puri".***

127. The paragraph 12 of the Written Statement, stated that the Plaintiff *"intended to bequeath and leave his right, title and interest in the suit property absolutely and forever unto and to the use of Late Mrs. Promila Puri"*. It was further asserted that the plaintiff had stated that he would bequeath the property to her through a Will, so that they would *"inherit"* it from him and pay only minimal mutation charges.

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128. *A Will, as defined under Section 2(h) of the Indian Succession Act,* 1925, is the legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death. *It is ambulatory in nature and takes effect only upon the death of the testator.* The ownership can pass only by inheritance after the death of the Plaintiff, *which presupposes that he continued to be the owner*.

129. Even if the Will had been prepared by the Plaintiff, *at best, it reflected an intention of the Plaintiff to give the property after his death, which also corroborates that he continued to be the owner of the suit property. **Admittedly, the Plaintiff is alive and*** further, Smt. Promila Puri expired on 08.04.2013, during the lifetime of the Plaintiff. Under Section 105 of the Act, where the legatee does not survive the testator, the legacy in her favour would lapse.

130. The existence of the Will, *is of little consequence,* since the testator is still alive. *A mere intention to transfer, howsoever express, does not by itself create or transfer any right, title or interest in immovable property, which can pass only in the manner recognised by law.* The Will, at best, may be a promise of a testamentary disposition, but it did not transfer the title in favour of Smt. Promila Puri and the legal heirs of Smt. Promila Puri cannot claim ownership on the basis of Will, which has failed to take effect.

131. ***Thus, the alleged Will, did not confer any right, title or interest upon the Defendants, in the suit property.***

E. *<u>Whether the Defendants acquired ownership by Adverse Possession, on account of the long possession:</u>*

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132. The plea of adverse possession has been taken in the Preliminary Submissions, repeated in para 6 of the Written Statement, thus: *"Assuming but not conceding, without prejudice, it is submitted that the Defendants enjoy adverse possession qua the Ground Floor and basement of the suit property."*

133. As noted above, the Defendants have themselves averred that the Plaintiff, out of love and affection, gave his consent to their residing in the suit property. Their defence thus, traces their right in the suit property through the Plaintiff, and is premised upon the Plaintiff being its owner. What remains for consideration is whether their long possession since December, 1999, which originated with such consent, confers any right upon them.

134. To claim ownership by adverse possession, the determinative test is not the duration of long possession, but such possession must be *nec vi, nec clam, nec precario, i.e.* hostile to the true owner, and actual, open, continuous and exclusive, for the statutory period of twelve years.

135. In *S.M. Karim v. Mst. Bibi Sakina*, AIR 1964 SC 1254, the Supreme Court held that a plea of adverse possession must at least show when the possession became adverse. In *Karnataka Board of Wakf v. Government of India*, (2004) 10 SCC 779, it was held that the claimant must plead when he came into possession, the nature of his possession, whether it was known to the owner, and for how long it continued, openly and undisturbed.

136. Recently, in *Bhag Singh v. Basant Kaur*, 2026 INSC 983, the Supreme Court reiterated that where possession is permissive in origin, mere lapse of time does not render it adverse, and the absence of pleadings identifying when the possession became hostile is not a mere technical

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defect. Further, in *Narasamma v. A. Krishnappa*, AIR 2020 SC 4178, it was held that a claim of title from a particular date and a plea of adverse possession from the very same date cannot be simultaneously sustained.

137. There is no averment as to when the possession became hostile, what act constituted the hostile assertion, or when it was brought to the knowledge of the Plaintiff. The possession is claimed from December, 1999, the very month in which the alleged settlement with the Plaintiff is stated to have been arrived at. *On the contrary, the Written Statement itself refers to the Defendants awaiting the formalities for transfer of title by the Plaintiff, even after the demise of Smt. Promila Puri. The Written Statement thus, discloses no hostile assertion of title against the Plaintiff.* The plea fails not because it is taken in the alternative, but because even as taken, it does not disclose the essential ingredients of adverse possession.

138. Similar facts as in hand, came up for consideration, in the case of *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370, wherein the owner/sister, while residing away, had permitted her brother to occupy and look after the premises. The Apex Court crystallized the governing principles, as follows:

> *"(i) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously; even by long possession of years or decades, such person would not acquire any right or interest in the said property;*
> *(ii) A caretaker, watchman or servant can never acquire interest in the property, irrespective of his long possession, and is required to give possession forthwith on demand;*
> *(iii) The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to*

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> *live in the premises for some time either as a friend, relative, caretaker or as a servant;*
> *(iv) The protection of the Court can only be granted or extended to a person who has a valid, subsisting rent agreement, lease agreement or licence agreement in his* favour; and
> *(v)* ***The caretaker or agent holds the property of the principal only on behalf of the principal and acquires no right or interest whatsoever for himself in such property, irrespective of his long stay or possession."***

139. The Supreme Court in *Maria Margarida* (supra) thus, held, *inter alia*, that gratuitous occupation, even for years or decades, does not confer title and a caretaker, servant, friend or relative permitted to occupy the premises does not acquire an interest merely by reason of such occupation. A caretaker or agent merely holds the property on behalf of the principal and cannot claim an independent right merely from the duration of possession. The Supreme Court thus, concluded *that no one acquires title to a property if he or she was allowed to stay in the premises gratuitously, and even by long possession of years or decades, such a person does not acquire any right or interest therein.*

140. *The aforesaid principles apply squarely to the present case.* The relationship between the Plaintiff and Smt. Promila Puri, being brother and sister, explains both the permission to reside in the suit property and its continuation over the years without payment of any rent. Such familial generosity, by itself, does not signify an intention to part with the ownership. Equally, the continued residence of the family of Smt. Promila Puri after her demise, cannot, merely by its duration, establish a transfer of title.

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141. The Plaintiff, while residing in Canada, had permitted his sister and her family to reside in the suit property. Their continued occupation, for whatever period, did not create any right in their favour to resist the claim for possession, once the permission was withdrawn.

II. *Whether the Relief to the Plaintiff is barred by delay, laches, acquiescence and estoppel*:

142. The pleas of *delay, laches, acquiescence and estoppel* are also without merit. The permission was withdrawn *vide* Notice dated 08.03.2018, requiring the Defendants to vacate by 15.04.2018, and the Suit was filed in the year 2018. A Suit filed within limitation, cannot be defeated on the ground of delay or laches. The continuation of the permission over the years, does not amount to acquiescence in any hostile claim, nor does it create any estoppel against the owner.

III. *Whether the Suit could be decreed under Order XII Rule 6 read with Order XV CPC:*

143. The ***main challenge*** of the Appellant is that the Suit could not have been decreed under Order XII Rule 6 read with Order XV CPC, without trial.

144. The Order XII Rule 6 empowers the Court to pronounce a judgment on admissions at any stage, either on the application of a party or of its own motion. The objection that the Decree was passed while considering an Application under Section 151 CPC is, therefore, of no consequence. The Supreme Court in *Uttam Singh Duggal & Co. Ltd. v. United Bank of India*, (2000) 7 SCC 120, held that the object of the provision is to enable a party to

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obtain a speedy judgment to the extent of the admissions. In *Karam Kapahi v. Lal Chand Public Charitable Trust*, (2010) 4 SCC 753, it was held that admissions may be gathered from the pleadings read as a whole, including constructive admissions.

145. In the present case, the Written Statement, *when read as a whole, discloses that* the Defendants have admitted that the Plaintiff inherited the suit property from his mother and that it stands mutated in his name. In para 8 of the Written Statement, they have specifically averred that *"the Plaintiff out of love and affection gave his consent to Late Mrs. Promila Puri and the Answering Defendants to reside at the suit property",* and similar averments are made in para 6 and 11 of the Written Statement. Thus, they have admitted that they came to reside in the suit property with his consent. They have also described the Letters dated 10.12.2017 and 08.03.2018 as a matter of record. ***The defences raised by them, as discussed above, even if accepted, do not confer upon them any right in the suit property.***

146. In order to be entitled to a decree of possession, the Plaintiff is required to establish, *firstly*, that he is the owner of the suit property, *secondly*, that the Defendants were in occupation of the suit property with his permission, which has been withdrawn, and *thirdly*, that the Defendants have no right or title in the suit premises, whether as tenants or authorised occupants.

147. In the present case, it is an admitted fact that the Plaintiff is the owner of the suit property. It is also admitted that the Defendants, along with *Smt. Promila Puri*, the sister of the Plaintiff, were in permissive use and occupation of the suit property. No licence fee or any other amount was paid by the Defendants for their occupation of the suit property. Once the

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permission to continue in possession was withdrawn, the possession of the Defendants became unauthorised, and *the Plaintiff became entitled to recover the possession of the suit property.*

148. Since all the material facts required for a Decree of possession were admitted, *there was no need to frame issues on the admitted facts, or to adduce evidence thereon.*

149. The learned District Judge, therefore, rightly held that in the light of the admissions of the Defendants in the Written Statement, no triable issue arose, and the Decree of possession was rightly passed under Order XII Rule 6 CPC, on the basis of the admissions.

150. The Appellant has asserted that he was denied a fair hearing. However, the record reflects that not only had the Defendants filed their Written Statement, which was eventually taken on record, but they had also addressed arguments on the aspect of passing a judgment under Order XII Rule 6 CPC. So much so, they had filed their Written Submissions dated 08.09.2025, specifically opposing the disposal of the Suit without trial. The assertion of the Appellant of being denied a fair hearing is not borne out by the record, and is not tenable.

151. In view of the foregoing discussion***, the Decree of possession of the suit property has been rightly granted in favour of the Plaintiff.***

IV. *Whether the grant of Mesne Profits is sustainable:*

152. The last aspect for consideration is the grant of *Mesne Profits* @ Rs.3,00,000/- per month, from the date of institution of the Suit *"till realization"*. Section 2(12) CPC defines *mesne profits as those profits which*

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the person in wrongful possession of such property actually received, or might with ordinary diligence have received therefrom.

153. Order XX Rule 12 CPC provides for the manner in which *mesne* profits are to be determined, as under:

> *"12. Decree for possession and mesne profits.-(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-*
> *(a) for the possession of the property;*
> *(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;*
> *(ba) for the mesne profits or directing an inquiry as to such mesne profits;*
> *(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-*
> *(i) the delivery of possession to the decree-holder,*
> *(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or*
> *(iii) the expiration of three years from the date of the decree, whichever event first occurs.*
> *(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."*

154. The occupation of the Defendants was *gratis, as admittedly, Smt. Promila Puri, the sister, had been put in possession by the Plaintiff, her brother, out of love and affection.* However, once the permission was withdrawn *vide* Notice dated 08.03.2018, requiring the Defendants to vacate the suit property by 15.04.2018, their possession became unauthorised from the said date.

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155. The contention of the Appellant is that since their occupation was *gratis*, and there was no relationship of landlord and tenant, no *mesne* profits can be granted. However, this contention is completely fallacious, because *mesne* profits are not limited to a relationship of landlord and tenant, but *pertain to unauthorised occupation of the suit premises.* It has already been held that once the permission was withdrawn by the Plaintiff, the occupation of the Defendants became unauthorised, for which they are liable to pay *mesne* profits, or user and occupation charges.

156. The gratuitous nature of the occupation during the subsistence of the permission does not absolve the Defendants of their liability to compensate the Plaintiff thereafter. As held by the Apex Cort in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, (2005) 1 SCC 705, once the right of the occupant to continue in possession comes to an end, he becomes liable to pay damages for use and occupation at the rate at which the owner could have let out the premises. The principle applies with greater force to a permissive occupant, who never had any right to occupy the premises except by the permission of the owner.

157. Therefore, though the Defendants are liable to pay user and occupation charges after 15.04.2018, *the more significant aspect is the determination of the quantum at which such charges are payable*. The Plaintiff claimed *Mesne* Profits @ Rs.2,50,000/- per month in the Plaint, while the rate of Rs.3,00,000/- per month was claimed in the Application under Section 151 CPC dated 16.09.2021, on the basis of copies of Lease Deeds of other properties in the locality. **There is no admission by the Defendants as to the rate.**

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158. The rate of Rs.3,00,000/- per month was thus, claimed on the basis of copies of Lease Deeds of other properties in the vicinity, annexed with the Application under Section 151 CPC. However, the Plaintiff was required to prove, through cogent evidence, whether by way of Lease Deeds of properties in the vicinity or otherwise, the rate for the effective determination of the user and occupation charges payable by the Defendants.

159. The learned Trial Court could not have accepted the copies of the Lease Deeds without being proved by the Plaintiff, and without affording the Defendants an opportunity, either by cross-examination or by leading evidence, to disprove the rate at which the *mesne* profits were claimed by the Plaintiff. The copies of the Lease Deeds could not have been accepted as absolute proof for calculating the *mesne* profits. In the absence of any evidence or admission of the Defendants in regard to the rate of *mesne* profits, the determination of *Mesne* Profits, or user and occupation charges, necessarily required an inquiry in terms of Order XX Rule 12 CPC.

160. Therefore, the grant of *Mesne Profits* @ Rs.3,00,000/- per month, without such inquiry, cannot be sustained. The impugned Judgment and Decree, to the extent it grants Mesne Profits, is accordingly set aside.

Conclusion:

161. In view of the foregoing discussion, **the Appeal is accordingly, partly allowed and the Decree of possession of the suit property in favour of the Plaintiff, *vide* Judgment and Decree dated 10.02.2026, is upheld.**

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162. However, **the Decree, to the extent it grants *Mesne* Profits** @ Rs.3,00,000/- per month from the date of institution of the Suit till realisation, **is set aside. The matter is remanded to the learned District Judge** for determination of *Mesne Profits/ user and occupation charges*, in accordance with Order XX Rule 12 CPC, after affording an opportunity to lead evidence, to both the parties.

163. The parties are directed to appear before the learned District Judge on 07.12.2026.

164. The pending Application(s), if any, are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 18, 2026/R

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